

## Proposed Amendment to Section 14 of the Connecticut Uniform Power of Attorney Act

Submitted by legal services organizations: Connecticut Legal Services, Inc. Greater Hartford Legal Aid, New Haven Legal Assistance, and Legal Assistance Resource Center

Sec. 14. (NEW) (*Effective October 1, 2014*) (a) Notwithstanding provisions in the power of attorney, an agent that has accepted appointment shall:

(1) Act in accordance with the principal's reasonable expectations, and if unknown, make all reasonable efforts to ascertain the principal's expectations, [to the extent actually known by the agent] and, otherwise, in the principal's best interest;

(2) Act in good faith; and

(3) Act only within the scope of authority granted in the power of attorney.

(b) Unless the power of attorney otherwise provides, an agent that has accepted appointment shall:

(1) Act loyally for the principal's benefit;

(2) Act so as not to create a conflict of interest that impairs the agent's ability to act impartially in the principal's best interest;

(3) Act with the care, competence and diligence ordinarily exercised by agents in similar circumstances;

(4) Keep a record of all receipts, disbursements and transactions made on behalf of the principal;

(5) Cooperate with a person that has authority to make health care decisions for the principal to carry out the principal's reasonable expectations to the extent actually known by the agent and, otherwise, act in the principal's best interest; and

(6) Attempt to preserve the principal's estate plan, to the extent actually known by the agent, if preserving the plan is consistent with the principal's best interest based on all relevant factors, including:

(A) The value and nature of the principal's property;

(B) The principal's foreseeable obligations and need for maintenance;

(C) Minimization of taxes, including income, estate, inheritance, generation skipping transfer and gift taxes; and

(D) Eligibility for a benefit, a program or assistance under a federal or state statute or regulation.

(c) An agent that acts in good faith is not liable to any beneficiary of the principal's estate plan for failure to preserve the plan.

(d) An agent that acts with care, competence and diligence for the best interest of the principal is not liable solely because the agent also benefits from the act or has an individual or conflicting interest in relation to the property or affairs of the principal.

(e) If an agent is selected by the principal because of special skills or expertise possessed by the agent or in reliance on the agent's representation that the agent has special skills

or expertise, the special skills or expertise must be considered in determining whether the agent has acted with care, competence and diligence under the circumstances.

(f) Absent a breach of duty to the principal, an agent is not liable if the value of the principal's property declines.

(g) An agent that exercises authority to delegate to another person the authority granted by the principal or that engages another person on behalf of the principal is not liable for an act, error of judgment or default of that person if the agent exercises care, competence and diligence in selecting and monitoring the person.

(h) Unless the power of attorney otherwise provides, an agent is not required to disclose receipts, disbursements or transactions conducted on behalf of the principal unless ordered by a court or requested by the principal, a guardian, a conservator, another fiduciary acting for the principal, a governmental agency having authority to protect the welfare of the principal or, upon the death of the principal, by the personal representative or successor in interest of the principal's estate. If so requested, the agent shall comply with the request not later than thirty days after the date of such request or provide a writing or other record substantiating why additional time is needed, in which case, the agent shall comply with the request not later than thirty days after the date of providing such writing or record.